

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEMETRICK McCAIN,

Plaintiff,

No. CIV S-05-0803 WBS KJM PS

vs.

KAISER EMERGENCY HOSPITAL,

Defendant.

FINDINGS AND RECOMMENDATIONS

By order filed June 7, 2005, plaintiff's complaint was dismissed and thirty days leave to file an amended complaint was granted.<sup>1</sup> The thirty day period has now expired. Although plaintiff has filed numerous pleadings since issuance of the June 7, 2005 order, none of the pleadings comply with the court's order to file an amended complaint alleging a basis for subject matter jurisdiction. If anything, plaintiff's pleadings appear to confirm that plaintiff has, at best, a state cause of action sounding in negligence against defendant.

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 11-110; Fed. R. Civ. P. 41(b).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days

<sup>1</sup> The order was returned to the Clerk's office as undeliverable but was sent to plaintiff's address of record.

1 after being served with these findings and recommendations, plaintiff may file written objections  
2 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
3 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
4 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
5 (9th Cir. 1991).

6 DATED: August 22, 2005.

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10 UNITED STATES MAGISTRATE JUDGE  
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